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S.214

Introduced by Senators Hardy, Gulick, Hashim, Ram Hinsdale, Vyhovsky and

White

Referred to Committee on

Date:

Subject: Orders against stalking and sexual assault

Statement of purpose of bill as introduced: This bill proposes to require the court to establish procedures for receiving requests for emergency ex parte orders against stalking or sexual assault outside regular court operating hours.

An act relating to emergency orders against stalking or sexual assault

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 12 V.S.A. § 5134 is amended to read:

§ 5134. EMERGENCY RELIEF

(a)(1) In accordance with the Vermont Rules of Civil Procedure, a person other than a family or household member as defined in 15 V.S.A. § 1101(2) may file a complaint for a temporary order against stalking or sexual assault. ~~Such complaint shall be filed during regular court hours~~ complaints may be filed outside regular court hours as provided in section 5136 of this title. The plaintiff shall submit an affidavit in support of the order.

1 (2) The court may issue a temporary order under this chapter ex parte,
2 without notice to the defendant, upon motion and findings by the court that the
3 defendant has stalked or sexually assaulted the plaintiff. The court may order
4 the defendant to stay away from the plaintiff or the plaintiff's children, or both,
5 and may make any other such order it deems necessary to protect the plaintiff
6 or the plaintiff's children, or both.

7 (b) Every order issued under this section shall contain the name of the
8 court, the names of the parties, the date of the petition, and the date and time of
9 the order and shall be signed by the judge. Every order issued under this
10 section shall state upon its face a date, time, and place that the defendant may
11 appear to petition the court for modification or discharge of the order. This
12 opportunity to contest shall be scheduled as soon as reasonably possible, which
13 in no event shall be more than 14 days from the date of issuance of the order.
14 At such hearings, the plaintiff shall have the burden of proving by a
15 preponderance of the evidence that the defendant stalked or sexually assaulted
16 the plaintiff. If the court finds that the plaintiff has met ~~his or her~~ the
17 plaintiff's burden, it shall continue the order in effect and make such other
18 orders as it deems necessary to protect the plaintiff or the plaintiff's children,
19 or both.

20 (c) Form complaints and form orders shall be provided by the Court
21 Administrator and shall be maintained by the clerks of the courts.

1 (d) Every order issued under this chapter shall bear the following language:
2 “VIOLATION OF THIS ORDER IS A CRIME SUBJECT TO A TERM OF
3 IMPRISONMENT OR A FINE, OR BOTH, AND MAY ALSO BE
4 PROSECUTED AS CRIMINAL CONTEMPT PUNISHABLE BY FINE OR
5 IMPRISONMENT, OR BOTH.”

6 ~~(e) Affidavit forms required pursuant to this section shall bear the~~
7 ~~following language: “MAKING FALSE STATEMENTS IN THIS~~
8 ~~AFFIDAVIT IS A CRIME SUBJECT TO A TERM OF IMPRISONMENT~~
9 ~~OR A FINE, OR BOTH, AS PROVIDED BY 13 V.S.A. § 2904.”~~

10 Sec. 2. 12 V.S.A. § 5136 is amended to read:

11 § 5136. PROCEDURE

12 (a) Except as otherwise specified in this chapter, proceedings commenced
13 under this chapter shall be in accordance with the Vermont Rules of Civil
14 Procedure and shall be in addition to any other available civil or criminal
15 remedies.

16 (b)(1) The Court Administrator shall establish procedures to ensure access
17 to relief after regular court hours, or on weekends and holidays. The Court
18 Administrator is authorized to contract with public or private agencies to assist
19 plaintiffs to seek relief and to gain access to Superior Court. Law enforcement
20 agencies shall assist in carrying out the intent of this section.

1 (2)(A) The court shall designate an authorized person to receive requests
2 for ex parte temporary orders submitted after regular court hours pursuant to
3 section 5134 of this title, including requests made by reliable electronic means
4 according to the procedures in this subdivision (2).

5 (B) If a secure setting is not available for processing an ex parte order
6 submitted after regular court hours, or if the authorized person determines that
7 electronic submission is appropriate under the circumstances, the authorized
8 person shall inform the applicant that a complaint and affidavit may be
9 submitted electronically.

10 (C) The affidavit shall be sworn to or affirmed by administration of
11 the oath over the telephone to the applicant by the authorized person and shall
12 conclude with the following statement: “I declare under the penalty of perjury
13 pursuant to the laws of the State of Vermont that the foregoing is true and
14 accurate. I understand that making false statements is a crime subject to a term
15 of imprisonment or a fine, or both, as provided by 13 V.S.A. § 2904.” The
16 authorized person shall note on the affidavit the date and time that the oath was
17 administered.

18 (D) The authorized person shall communicate the contents of the
19 complaint and affidavit to a judicial officer telephonically or by reliable
20 electronic means. The judicial officer shall decide whether to grant or deny the
21 complaint and issue the order solely on the basis of the contents of the affidavit

1 or affidavits provided. The judicial officer shall communicate the decision to
2 the authorized person, who shall communicate it to the applicant. If the order
3 is issued, it shall be delivered to the appropriate law enforcement agency for
4 service and to the holding station.

5 (c) The Office of the Court Administrator shall ensure that the Superior
6 Court has procedures in place so that the contents of orders and pendency of
7 other proceedings can be known to all courts for cases in which an order
8 against stalking or sexual assault proceeding is related to a criminal
9 proceeding.

10 (d) Unless otherwise ordered by the court, an order issued pursuant to
11 sections 5133 and 5134 of this title shall not be stayed pending an appeal.

12 Sec. 3. EFFECTIVE DATE

13 This act shall take effect on September 1, 2024.